

SENATE BILL 1757
By McNally

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 50, relative to providing for the immediate seizure of the driver license of a person driving under the influence of an intoxicant and for the administrative review and revocation of such license.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 50, is amended by adding Section 2 through Section 15 of this act as a new part thereto.

SECTION 2. The general assembly finds and declares that enactment of this act is necessary:

(1) To provide safety for all persons using the highways of this state by quickly revoking the driving privilege of those persons who have shown themselves to be safety hazards by driving with an excessive concentration of alcohol in their bodies; and

(2) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for administrative review prior to the effective date of revocation, and an opportunity for a full hearing as quickly as possible after the revocation becomes effective.

SECTION 3. As used in this act unless the context clearly requires otherwise:

(1) "Department" means the Tennessee department of safety;

(2) "Driver license" means any license to operate a motor vehicle issued under Tennessee law;

(3) "Law enforcement officer" refers to any law enforcement officer who has satisfactorily completed a recruit training program approved by the Tennessee peace officer standards and training commission;

(4) "License" means any driver license or any other license or permit to operate a motor vehicle issued under, or granted by, Tennessee law including:

(A) Any temporary license or instruction permit;

(B) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

(C) Any nonresident's operating privilege as defined herein;

(5) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by Tennessee law pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in Tennessee;

(6) "Revocation" means the termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this part; and

(7) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province or territory of Canada.

SECTION 4.

(a) The department shall revoke the license of any person upon its determination that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was eight-

hundredths of one percent (.08%) or more. For purposes of this act, alcohol concentration means either grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath.

(b) The department shall revoke the license of any person upon its determination that the person refused a test to determine alcohol concentration in a person's blood as provided in §55-10-406.

(c) The department shall make a determination of these facts on the basis of the report of a law enforcement officer required in Section 5, and this determination shall be final unless an administrative review is requested under Section 10 or a hearing is held under Section 11.

(d) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this part.

SECTION 5.

(a) A law enforcement officer who arrests any person for a violation of § 55-10-401, shall, within five (5) working days, forward to the department a sworn report of all information relevant to the enforcement action, including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated § 55-10-401, a report of the results of any chemical tests which were conducted or refusal to submit to a test, and a copy of the citation, driver license, and receipt for temporary permit, and complaint filed with the court. A copy of the completed notice of revocation form, a copy of any completed temporary permit form and any driver license taken into possession under this section shall be forwarded immediately to the department by the officer.

(b) The report required by this section shall be made on forms supplied by the department.

(c) The report required by this section shall be accepted as prima facie evidence in all administrative reviews and hearings authorized by this part.

SECTION 6.

(a) Upon receipt of the report of the law enforcement officer, the department shall make the determination described in Section 4.

(b) The notice of proposed revocation shall be mailed, by registered or certified mail, return receipt requested, to the person at the address provided by the enforcement officer's report if such address differs from the address of record. Signature of the actual recipient of the notice is not required so long as there is adequate notation on the return receipt of actual delivery.

(c) The notice of proposed revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request an administrative review and a hearing, the procedure for requesting an administrative review and a hearing, and the date by which a request for an administrative review must be made in order to receive a determination prior to the effective date of the revocation.

(d) If the department determines the person is not subject to license revocation, the department shall notify the person of its determination and shall rescind any notice of proposed revocation served upon the person by the enforcement officer.

SECTION 7.

(a) Whenever the chemical test results for a person who is being charged with a violation of § 55-10-401, show an alcohol concentration of eight-hundredths of one percent (.08%) or more, or the person refuses a test to

determine alcohol content, the officer, acting on behalf of the department, shall serve the notice of proposed revocation personally on the arrested person.

(b) When the law enforcement officer serves the notice of proposed revocation, the officer shall take possession of any driver license issued by the state which is held by the person. When the officer takes possession of a valid driver license issued by this state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for thirty (30) days after its date of issuance. If determination has not been made by the department under the provisions of Section 6 within sixty (60) days of the initial seizure of license, the driver may apply for a restricted license, as provided for in § 55-50-403(d). Any payment made for such restricted license shall apply towards any fees charged under Section 9.

(c) A copy of the completed notice of proposed revocation form, a copy of any completed temporary permit form, and any driver license taken into possession under this section, shall be forwarded within five (5) working days to the department by the officer.

(d) The department shall provide forms for notice of proposed revocation and for temporary permits to law enforcement agencies.

(e) Any notice or citation completed by an officer shall contain a signed statement by the officer that the breathalyzer, if used, was properly calibrated at the time of use.

(f) Only law enforcement officers who have satisfactorily completed a recruit training program, approved by the Tennessee peace officers standards and training commission may act on behalf of the department by serving notice of proposed revocation, taking possession of a driver license and issuing a temporary permit as authorized by this section.

SECTION 8.

(a) The license revocation shall become effective thirty (30) days after the subject person has received the notice of proposed revocation as provided in Section 7.

(b) The period of license revocation under this section shall be as follows:

(1) The period shall be three (3) months if the person's driving record shows no prior alcohol or drug-related enforcement contacts during the immediately preceding five (5) years.

(2) The period shall be one (1) year if the person's driving record shows one (1) or more prior alcohol or drug-related enforcement contacts during the immediately preceding five (5) years.

(3) For purposes of this section, "alcohol or drug-related enforcement contacts" include any revocation under this part, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or alcohol and drugs.

(c) Where a license is revoked under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of § 55-10-401, both the revocation under this section and the revocation under § 55-10-403 shall be imposed, but the periods of revocation shall run concurrently, and the total period of revocation shall not exceed the longer of the two (2) revocation periods.

(d) If a person is acquitted of any charges under § 55-10-401, if a nolle prosequi is taken, or if such charges are reduced or otherwise disposed of in favor of the defendant, the court shall notify the department and the license revocation shall cease upon receipt by the department of such notification.

SECTION 9.

(a) The periods of revocation specified by Section 8 are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstances and no restricted driver license shall be issued during the revocation period, except as provided in Section 7(b); provided, however, if any criminal charges arising out of the same incident have had final determination rendered by a court, the court may order a restricted license under the provisions of § 55-10-403(d), after a minimum period of thirty (30) days revocation.

(b) No driving privilege may be restored until all applicable reinstatement fees have been paid and all requirements of title 55, chapter 12, have been satisfied. No more than one (1) fee shall be charged for license restoration for any one (1) offense even if a person loses a license under the provisions of this act and is also convicted of an offense under § 55-10-401.

(c) Any person who has received a notice of proposed revocation under this part shall, prior to the return of any driver license taken pursuant to Section 7, be required to pay to the department an administrative processing fee of twenty-five dollars (\$25.00). If a person arrested for and charged with violating § 55-10-401, is acquitted of such charge, or if the charge is not successfully prosecuted, such person's driver license shall be returned with reimbursement of such administrative fee.

SECTION 10.

(a) Any person who has received a notice of proposed revocation under this part may request an administrative review. The request may be accompanied by a sworn statement or statements and any other relevant evidence which the person wants the department to consider in reviewing the determination made pursuant to Section 4.

(b) When a request for administrative review is made, the department shall review the determination made pursuant to Section 4. In the review, the department shall give consideration to any relevant sworn statement or other evidence accompanying the request for the review, and to the sworn statement of the law enforcement officer required by Section 5. If the department determines, by the preponderance of the evidence, the person drove or was in actual physical control of a motor vehicle while having an alcoholic concentration of eight-hundredths of one percent (.08%) or more, or the person refused the test, the department shall sustain the order of revocation. If the evidence does not support such a determination, the department must rescind the order of revocation. The determination of the department upon administrative review is final unless a hearing is requested under Section 11.

(c) The department shall make a determination upon administrative review prior to the effective date of the revocation order if the request for the review is received by the department within eight (8) days following notice by the department of the proposed revocation. Where the request for administrative review is received by the department more than eight (8) days following service of the notice of revocation, the department shall make its determination within seven (7) days following the receipt of the request for review.

(d) A request for administrative review does not stay the license revocation. If the department is unable to make a determination within the time limits specified in subsection (c), it shall stay the revocation pending that determination.

(e) The request for administrative review shall be made in writing on forms provided by the department and received by the department at the address stated on the form.

SECTION 11.

(a) Any person who has received a notice of proposed revocation may, following an administrative review and within twenty (20) days of receipt of notice of the determination of that review, make a written request for a hearing on forms provided by the department to the address provided on the form. The notice of the determination of such review is deemed received three (3) days after mailing. If the person's driver license has not been previously surrendered, it must be surrendered at the time the request for a hearing is made. A request for a hearing does not stay the license revocation.

(b) The hearing shall be scheduled to be held as quickly as practicable within thirty (30) days of receipt of the request for a hearing. The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have authority to administer oaths and affirmations, to examine witnesses and take testimony, to receive relevant evidence, to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken, to regulate the course and conduct of the hearing, and to make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person drove or was in actual physical control of a motor vehicle while having an alcohol concentration of eight-hundredths of one percent (.08%) or more, or the person refused a chemical analysis test. If the presiding hearing officer finds the affirmative of this issue, the revocation order shall be

sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy shall be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

(g) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

(h) The department shall reimburse any governmental agency expenses incurred while testifying in hearings authorized by this part, when the department subpoenas the governmental agency's representative. Funds for such payments shall be paid from the expendable receipts collected by the department under § 55-12-129.

SECTION 12.

(a) Within thirty (30) days of the issuance of the final determination of the department following a hearing under Section 11, a person aggrieved by the determination shall have the right to file a petition in the chancery court in Davidson County or in the chancery court for the county where the arrest or offense occurred for judicial review. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory

authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

SECTION 13. The Tennessee Uniform Administrative Procedures Act compiled in title 4, chapter 5, applies to the extent it is consistent with proceedings under Sections 11 and 12 of this part relating to the administrative hearing and judicial review.

SECTION 14. For the purpose of implementing the provisions of this act, the commissioner of safety is directed to apply for all applicable federal funding.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to that end the provisions of this act are declared to be severable.

SECTION 16. This act shall take effect October 1, 2003, the public welfare requiring it.